

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CISCO SYSTEMS, INC., et al.,
Plaintiffs,
v.
WILSON CHUNG, et al.,
Defendants.

Case No. 19-cv-07562-PJH

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
STRIKE PORTIONS OF TRADE
SECRET DISCLOSURE, DENYING
MOTION FOR A PROTECTIVE
ORDER, AND GRANTING IN PART
AND DENYING IN PART MOTIONS TO
SEAL**

Re: Dkt. Nos. 136, 137, 141, 149, 154,
156, 158, 160

Before the court are defendants Plantronics Inc.'s ("Plantronics") and Thomas Puorro's ("Puorro") motion to strike and challenge the sufficiency of plaintiff Cisco Systems, Inc.'s California Code of Civil Procedure § 2019.210 trade secret designation. Dkt. 136 (the "motion to strike").¹ Also before the court is Plantronics' motion for a protective order from pending discovery served by plaintiff. Dkt. 137 (the "motion for a protective order"). Defendants James He ("He") filed a joinder to both motions. Dkt. 146. Lastly, also before the court are various requests by plaintiff to seal portions of its trade secrets designation, the parties' briefing in connection with the motion to strike, and numerous exhibits filed with such briefs. Dkts. 141, 149, 160.

Having read the parties' papers and carefully considered their argument and the relevant legal authority, and good cause appearing, the court hereby **GRANTS IN PART** and **DENIES IN PART** the motion to strike, **DENIES** the motion for a protective order,

¹ To simplify, the court will refer only to "Plantronics" when discussing both its and Puorro's combined briefing on the above motions.

1 and **GRANTS IN PART** and **DENIES IN PART** the requests to seal.

2 BACKGROUND

3 Plaintiff sued defendants for purportedly misappropriating its trade secrets. On
4 May 26, 2020 and August 5, 2020, the court issued two orders deciding numerous
5 motions, including two motions to dismiss the then-operative pleading in this action. Dkt.
6 97 (the “May 26 order”); Dkt. 126 (the “August 5 order”). The court’s decision on the
7 instant motion to strike depends in part on the holdings in both those orders. The court
8 will detail its prior orders as necessary in its analysis.

9 Now for the events giving rise to the parties’ most recent dispute. On August 11,
10 2020, plaintiff served Plantronics with its initial trade secrets disclosure pursuant to
11 California Code of Civil Procedure § 2019.210. The next day, after correcting for an
12 apparent numbering mistake, plaintiff re-served that same disclosure, recaptioned as
13 plaintiff’s “First Amended Trade Secret Identification Pursuant to CCP § 2019.210.” This
14 version of the disclosure is at the heart of Plantronics’ motion to strike. In this order, the
15 court will refer to it as the “disclosure” and cite to its pages and lines directly rather than
16 its ECF docket number.²

17 The disclosure comprises seven different sections discussing the purported trade
18 secrets allegedly taken by defendants. The sections at issue include the following:

- 19 • The Project Sunkist Trade Secrets (Section II, Discl. 3-22).
- 20 • The Project Polaris Trade Secrets (Section III, Discl. 22-49).
- 21 • The Project Vecchio Trade Secrets (Section V, Discl. 60-65).
- 22 • The EA Document (Section VI, Discl. 68).
- 23 • The Project Rialto Trade Secrets (Sections VII, Discl. 68-69).
- 24 • The Business Information Trade Secrets (Section VIII, Discl. 69-76).

25 _____
26 ² To further complicate matters, Plantronics refiled the disclosure under seal in a
27 declaration at both Docket 136-5 and Docket 138. It appears that Plantronics did so
28 because of a corrupted PDF file affecting the declaration itself filed at Docket 136-5.
Based on the court’s review, the disclosure contained at Docket 138 (pages 5-83) is
identical to that contained at Docket 136-5 (pages 5-83). The court will refer to the
original disclosure filed at Docket 136-5.

1 Project Sunkist is plaintiff's codename for one of its headsets. Project Polaris and
2 Vecchio are plaintiffs' codenames for its video-conferencing devices. The EA Document,
3 previously discussed in this court's prior order, is a particular document purportedly
4 misappropriated by defendant Wilson Chung ("Chung"). It supposedly contains an
5 amalgamation of information for various plaintiff devices. Project Rialto is plaintiff's
6 codename for a next generation device that the court need not detail. The Business
7 Information refers to various sorts of plaintiff's business strategies and plans that prior
8 employee, defendant Jed Williams ("Williams"), and Puorro purportedly misappropriated.

9 In its motion to strike, Plantronics contends that 23 trade secrets designated in the
10 above sections of the disclosure fall outside the scope of this court's prior orders, which
11 determined the purported trade secret information that plaintiff both sufficiently described
12 in its pleadings and adequately alleged to maintain independent economic value. As part
13 of that motion, Plantronics adds an ancillary attack about the lack of particularity in detail
14 of various other designated trade secrets.

15 On August 11, 2020, the same day that plaintiff served the first version of its
16 disclosure, plaintiff served defendants with various written discovery requests. Dkt. 137-2
17 at 4. These requests were the exact same requests served on or around April 15, 2020,
18 *i.e.*, before the court issued its prior orders. Dkt. 137-2 at 5 (plaintiff's counsel's email
19 stating "In addition, please find attached the discovery requests that have already been
20 served in this matter"); Dkt. 137-3 (April 15, 2020 signature date); Dkt. 137-4 (April 15,
21 2020 signature date).

22 Several weeks later, on September 4, 2020, Plantronics emailed plaintiff seeking
23 to meet and confer about these requests and challenging plaintiff's "Highly Confidential –
24 Attorneys' Eyes Only" confidentiality designation in the disclosure. Id. at 3. Days later,
25 on September 8, 2020, plaintiff responded stating that it would be "happy to schedule a
26 meet and confer" provided that Plantronics inform plaintiff of the basis of that request as
27 well as the challenge to the highly confidential designation. Id.

28 Plantronics responded that same day. Plantronics indicated that it sought to

1 discuss the discovery request issues previously briefed in its May 20, 2020 motion to stay
2 discovery, the impact of the court's August 5 order on the re-served discovery requests,
3 and some of its basis for challenging the designations. Id. at 2. Plantronics followed-up
4 the next day. Id. On September 10, 2020, Plantronics filed the instant motions.

DISCUSSION

I. Motion to Strike the Disclosure

A. Legal Standard

Federal Rule of Civil Procedure 12(f) provides that the court "may strike from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a [Rule] 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010).

Motions to strike are not favored and "should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." Colaprico v. Sun Microsystem, Inc., 758 F. Supp. 1335, 1339 (N.D. Cal. 1991). When a court considers a motion to strike, it "must view the pleadings in light most favorable to the pleading party." Uniloc v. Apple, Inc., 2018 WL 1640267, at *1 (N.D. Cal. Apr. 5, 2018). A court must deny the motion to strike if there is any doubt whether the allegations in the pleadings might be at issue in the action. In re 2TheMart.com, Inc. Sec. Litig., 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000). Ultimately, the decision "to grant a motion to strike lies within the sound discretion of the district court." Rees v. PNC Bank, N.A., 308 F.R.D. 266, 271 (N.D. Cal. 2015).

B. Analysis

As previously stated, Plantronics challenges the disclosure on two grounds.³ First,

³ Plantronics also challenged the disclosure on grounds that plaintiff unreasonably designated the entirety of the 80-page disclosure as Attorney's Eyes Only. Dkt. 136-3 at 29-30. Following that challenge, plaintiff served another amended disclosure revising only those confidentiality designations. Dkt. 149-4 at 29. Plantronics then withdrew its

1 it argues that the disclosure seeks to designate trade secrets outside the scope of that
2 information determined actionable by the court in its prior orders. Dkt. 146-3 at 14-19.
3 Second, it argues that the disclosure fails to describe the trade secrets with the
4 reasonable particularity. Id. at 20-29.

5 Plaintiff disagrees. As a threshold matter, plaintiff asserts that the motion to strike
6 is premature because Plantronics failed to meet and confer under Local Rule 37-1. Dkt.
7 149-4 at 7-11. Plaintiff also suggests that this motion is procedurally improper because
8 Plantronics failed to articulate a legal basis to strike the subject disclosure portions. Id. at
9 20. Lastly, plaintiff contests both of Plantronics' substantive challenges on the merits. Id.
10 at 11-29. The court will analyze each dispute in turn.

11 **1. Local Rule 37-1 Does Not Render the Motion to Strike Premature**

12 Civil Local Rule 37-1 provides that “[t]he court will not entertain a request or a
13 motion to resolve a disclosure or discovery dispute unless, pursuant to Fed. R. Civ. P. 37,
14 counsel have previously conferred for the purpose of attempting to resolve all disputed
15 issues.” Civ. L.R. 37-1(a). As used in this local rule, the term “disclosure” is undefined.

16 However, when analyzed in the context of Federal Rule of Civil Procedure 37
17 (which the local rule refers to), it is apparent that the the term “disclosure” means the
18 mandatory disclosures contemplated by Federal Rule of Civil Procedure 26. Fed. R. Civ.
19 Pro. 37(a)(3) (“If a party fails to make a disclosure required by Rule 26(a), any other party
20 may move to compel disclosure and for appropriate sanctions.”). A mandatory disclosure
21 under Rule 26(a) include “initial disclosures,” Fed. R. Civ. Pro. 26(a)(1) (requiring
22 disclosure of basic information to begin discovery), “disclosure of expert testimony,” Fed.
23 R. Civ. Pro. 26(a)(2) (requiring disclosure of an expert’s identity, topic of testimony, and
24 opinion), and “pretrial disclosures,” Fed. R. Civ. Pro. 26(a)(3) (requiring disclosure of
25 expected trial witnesses).

26 Plaintiff is incorrect that a California Code of Civil Procedure § 2019.210
27

28 challenge to those designations. Dkt. 158-4 at 17-19. Thus, only two challenges remain.

1 disclosure—which is uniquely required under California state law—falls within any of the
2 categories of disclosures contemplated in the Federal Rules of Civil Procedure. Thus,
3 Plantronics was not required to meet and confer before filing the motion to strike.

4 **2. Plaintiff's Motion to Strike Is Procedurally Permissible**

5 Plaintiff argues that Plantronics “failed to articulate any rule or legal standard that
6 governs” its motion to strike. Dkt. 149-4 at 20. On that basis, plaintiff asserts that the
7 court should dismiss the instant motion. Id. The court disagrees.

8 It is well-established that a district court maintains “inherent authority to manage
9 their dockets and courtrooms with a view toward the efficient and expedient resolution of
10 cases.” Dietz v. Bouldin, 136 S. Ct. 1885, 1892 (2016). Such authority includes the
11 court’s ability to enforce its prior orders. Yusov v. Yusuf, 892 F.2d 784, 787 (9th Cir.
12 1989) (“We cannot say that the trial court abused its discretion in this case. The Yusovs
13 and their attorney consistently and willfully failed to obey court orders and follow the rules
14 of procedure, resulting in great delay. . . . The district court has an obligation to manage
15 its docket[] and may use sanctions against a party when necessary.”).

16 Here, there is no reasonable dispute that Plantronics’ must have some procedural
17 vehicle to challenge plaintiff’s supposed over-designation of the actionable trade secrets
18 in this case. That conclusion is particularly true where, as argued here, such designation
19 purportedly occurs in violation of this court’s prior orders. While the court agrees that a
20 motion to strike is generally aimed at a pleading such as a complaint or answer, it does
21 not see any reason to abstain from using it to cure an overreach in an important
22 document meant to guide this litigation. Indeed, plaintiff does not proffer any authority
23 barring such use. Accordingly, the court will turn to the merits of the motion to strike.

24 **3. The Designated Information at Issue Falls Within and Outside
25 the Scope of the Court’s Prior Orders**

26 Plantronics’ first challenge focuses on the scope of information designated as
27 purportedly misappropriated by He and Chung. The court will analyze the subject
28 information as it pertains to each defendant in turn.

1 **a. He**

2 In its August 5 order, the court concluded that plaintiff adequately alleged that He
3 misappropriated the following two sorts of trade secret information: (1) design documents
4 for plaintiff's headset prototypes and (2) hardware diagrams for such prototypes. Dkt.
5 126 at 16. The court specifically held that only these two sorts of information may serve
6 as the basis for plaintiffs' trade secrets claim against He. Id.

7 In its opening brief, Plantronics argues that the court should strike various trade
8 secrets purportedly misappropriated by He that are designated in the disclosure. To
9 support that argument, Plantronics reasons that the designated information does not
10 qualify as a "design document" or "hardware diagram." Dkt. 136-3 at 14-16.

11 Below, the court summarizes the nine He-related trade secrets that remain at
12 issue. Based on its review of the disclosure, the court concludes that seven of them fall
13 within the scope of the its prior order while two of them do not.

14 **i. Designated Information Within the Scope of the
15 Prior Order**

16 **Development Process** – This diagram outlines the stages in the Sunkist
17 headset's prototyping process. Discl. at 11. It also generally lists the sorts of tasks
18 associated with each development stage. Id.

19 **How Cisco Allocated Responsibility** – This chart shows how plaintiff allocated
20 responsibility for Sunkist's development between itself and its manufacturers. Discl. at
21 12-13. It also refers to the Sunkist's parts. Id.

22 **Competitive Analysis** – These spreadsheet excerpts detail aspects of Sunkist's
23 design, including its weight, microphone type, and battery performance. Discl. at 20.
24 They also compare Sunkist's capabilities against competing products. Id.⁴

25 **Feature Comparison** – This chart lists multiple aspects of Sunkist's design,

26
27

⁴ As plaintiff points out in its opposition, the "vendor proposal tab" referred to in the
28 disclosure is a citation, **not** a designated trade secret. Discl. at 19-20. Accordingly, the
court need not consider Plantronics' mistaken challenge regarding that citation.

1 including its microphone and charging capabilities. Discl. at 13. It also compares the
2 headset against competing products. Id.

3 **Specifications for the Sunkist Mobile Application** – This diagram shows
4 feature-related details for a mobile phone application apparently intended for use with the
5 Sunkist. Discl. at 16-17. It also reflects Sunkist's settings and audio capabilities. Id.

6 **Plastic Materials** – This chart lists the numerous plastic parts used to
7 manufacture Sunkist. Discl. at 21. It details the finishes and the relative costs for each
8 part. Id.

9 **Supplier Related Information** – These charts principally outline general
10 categories of Sunkist's costs. Discl. at 20-21. When doing so, they also list the various
11 sorts of Sunkist's component parts, including its battery, plastic parts, and printed circuit
12 board assembly ("PCBA"). Id.

13 Here, Plantronics might, as a factual matter, be correct that the above seven trade
14 secrets do not qualify as a "design document" or "hardware diagram." Dkt. 136-3 at 15-
15 16. However, "motions to strike should not be granted unless it is clear that the matter to
16 be stricken could have ***no possible bearing*** on the subject matter of the litigation."

17 Colaprico, 758 F. Supp. at 1339.

18 Based on the specificity of the technical information in the above-referenced
19 charts, diagrams, and spreadsheet excerpts, the court cannot, at this juncture in the
20 litigation, conclude that such information does not derive from or reflect the conclusions in
21 a design document. Thus, for purposes of this motion, the court finds that the above
22 seven trade secrets may well fall within the scope of its prior order. Given that, the court
23 denies the motion to strike those trade secrets.⁵

24 That said, to the extent plaintiff designates the Plastic Materials or Supplier
25 Related Information as trade secrets for purposes of their cost-related information, such

27 ⁵ In its opposition, plaintiff acknowledges that the Specific Cisco Product Information
28 trade secret concerns Chung, ***not*** He. Dkt. 149-4 at 24. That acknowledgment moots
Plantronics' contention that plaintiff's designation of this trade secret with respect to He
falls outside the court's prior order.

use is improper and may not form a basis for discovery. The court will not permit plaintiff to backdoor non-actionable information by including it with actionable information.

ii. Designated Information Outside the Scope of the Prior Order

Internal Revenue Targets for Project Sunkist – This chart details Sunkist’s revenue targets for 2020 through 2022. Discl. at 21-22. Such targets include gross sales, profit margins, and number of units sold. Id. It does not refer to Sunkist’s design or hardware. In its opposition, plaintiff argues that this information is within the scope of the court’s prior order because it is included in a purported design document named “Sunkist Business Commit.” Dkt. 149-4 at 21-22.

Plaintiff's argument rests on a gross simplification of this court's prior order. When the court held that "plaintiff adequately alleged that the design documents and hardware diagrams for its headset prototypes" may serve as a basis for its trade secrets claims, Dkt. 126 at 16, it did so in reference to plaintiff's independent economic value allegations at paragraph 134 of its second amended complaint ("SAC"). Id. at 12-16. That paragraph defines "architectural design documents and hardware diagrams" as a subset of "design specifications," which "allow production of the system at scale without requiring the manufacturer to repeat Cisco's iterative design process." SAC ¶ 134. It further explains "[t]hese specifications are the end result of Cisco's orchestrated and labor-intensive design process" and reflect a product's "component selection and layout." Id.

In light of the above, the court finds that the only reasonable construction of paragraph 134's use of the term "design documents" is that it means technical, engineering-like documents. It does not mean, as plaintiff seems to argue, that any document merely discussing a product's design qualifies as a "design document."

The court reviewed the **selected** portions of the Sunkist Business Commit document filed by plaintiff in support of its opposition. Dkt. 156-1. Belied by its name, that document appears to be a business presentation that discusses Sunkist's features, not a specification that an engineer would use to determine Sunkist's "component

1 selection and layout" or a manufacturer would use to produce Sunkist at scale. Indeed,
2 the third slide in that presentation justifies Sunkist's business case, stating:

3 ***Why Sunkist . . .*** Sunkist will be our premium platform . . .
4 Platform will provide multiple variations of headsets . . . ***These***
5 ***will drive overall headset revenue . . . This is an opportunity***
6 ***to leap the competition . . .*** Sunkist headsets will be built as
companions to our next gen desktop devices . . . Professional
Headsets growing at 11%, Premium Headset like Jabra Evolve
75 @ 20+. Dkt. 156-1 at 3 (emphasis added).

8 The court has settled the pleadings. Plaintiff may not now import non-technical
9 information concerning Sunkist by an expansive use of the term "design document."
Given the above, the court strikes the disclosure at pages 21:15 through 22:13.

10 **Project Sunkist Business Commit** – These diagrams refer to various sorts of
11 marketing information relating to Sunkist and competitor headsets. Discl. at 11-12. The
12 first diagram includes five pictures of headsets on a 2019 timeline with vague
13 descriptions of their intended users and three bullet-points speculating about Sunkist's
14 next generation. *Id.* at 12. The second diagram is a graph with X and Y axes comparing
15 Sunkist to competing headsets in terms of features and price. *Id.* Neither diagram refers
16 to Sunkist's particular design or hardware and, like the "Internal Revenue Targets" chart
17 analyzed above, both are excerpts from the Sunkist Business Commit document.

18 Plaintiff again argues that marketing information qualifies as a trade secret
19 because it is part of that so-called "design document." Dkt. 149-4 at 21. For the same
20 reasons provided above, the court rejects that argument. Accordingly, the court strikes
21 the disclosure at pages 11:27 through 12:21.

22 **b. Chung**

23 In its August 5 order, the court concluded that plaintiff adequately alleged that
24 Chung misappropriated the following four sorts of trade secret information: (1) design
25 specifications and schematics of its pre-release video conferencing prototype; (2) design
26 specification and schematics of its sound bar products; (3) the EA document; and (4)
27 information concerning its emerging business opportunities in the collaboration space.
28 Dkt. 126 at 12.

In its opening brief, Plantronics argues that various trade secrets designated in the disclosure as information purportedly misappropriated by Chung do not fall within the scope of the court's August 5 order. Dkt. 136-3 at 16-19.

Below, the court summarizes the 14 Chung-related trade secrets that remain at issue. Based on its review of the disclosure, the court concludes that seven of them fall within the scope of the its prior order while the remaining seven do not.

i. Designated Information Within the Scope of the Prior Order

A Detailed Build Strategy – This chart describes the hardware and PCBA specifications for the Polaris video conferencing prototype at its various stages. Discl. at 35-36.

Spreadsheet Including Pricing Commitments – This spreadsheet excerpt describes pricing commitments by a Cisco supplier for its manufacturing of the Vecchio video conferencing device. Discl. at 66-67. As part of that description, the spreadsheet lists various hardware requirements for Vecchio. Id. at 67.

Project Polaris Survey Results – These charts outline the features that users find most valuable in Polaris and list particular companies and industries that would serve as Polaris’s expected “key” customers. Discl. at 36-37.

Existing Bookings Data – This pie chart shows the percentage of plaintiff's desktop products purchasers by industry segment. Discl. at 37-38.

Sales Forecast for Project Polaris and DX80 – This chart forecasts the number of Polaris and DX80 devices that plaintiff will sell between 2019 and 2021. Discl. at 38.

Historic Sales Data – This slide outlines quarterly sales for plaintiff's desktop devices between 2011 and 2018. Discl. at 39.

Project Sunkist's Competitive Differentiators – This table compares Sunkist's features to competing products. Discl. at 13-14. It is an excerpt from the EA document. Dkt.149-4 at 25.

Again, Plantronics might, as a factual matter, be correct that the Detailed Build

Strategy and Spreadsheet Including Pricing Commitment trade secrets do not qualify as a “design specification” or “design schematic.” Dkt. 136-3 at 19. However, given the specificity of the technical information in their respective chart and spreadsheet, the court cannot conclude that this information does not derive from or otherwise reflect the conclusions in either such document.

Separately, with respect to the Project Polaris Survey Results, Existing Bookings Data, Sales Forecasts for Project Polaris and DX80, and Historic Sales Data trade secrets, the court cannot conclude that the information in their charts and slides does not qualify as concerning plaintiff's emerging business opportunities in the collaboration space. Again, on the instant motion, a court must "view the pleadings in a light most favorable to the pleading party." Uniloc., 2018 WL 1640267, at *1.

Lastly, as decided in the court’s August 5 order, the EA document itself forms a basis for the trade secrets claims against Chung. Thus, any information in it—and **only** such information—comes within the scope of the court’s prior order. As previously held by the court, plaintiff may not, beyond the EA document, base its trade secrets claims against Chung on competitive differentiators. Dkt. 126 at 10 (“plaintiff failed to adequately allege the independent economic value of any category of information concerning the remaining subject matters—namely, its . . . component specification and competitive differentiators for its other unspecified products (***outside of the EA document***).” Dkt. 126 at 10 (emphasis added).

In short, the court finds that the above seven trade secrets arguably fall within the scope of its prior order. Thus, the court denies the motion to strike those trade secrets.

ii. Designated Information Outside the Scope of the Prior Order

In its prior order, the court concluded that “plaintiff failed to adequately allege the independent economic value of any category of information concerning the remaining subject matters,” which, among others, include plaintiff’s “communications product portfolio [and] strategy and costs for the pre-release video conferencing display product.”

1 Dkt. 126 at 10. Given that conclusion, the court expressly held that information pertaining
2 to the remaining subject matters may not serve as a basis for the trade secrets claims.

3 Despite the clarity of that holding, plaintiff designates the following as purported
4 trade secrets in its disclosure:

- 5 • Cisco Video Products Portfolio. Discl. at 34.
- 6 • Project Polaris Internal Strategy. Id. at 33-34.
- 7 • Project Polaris Sales Strategy. Id. at 34-35.
- 8 • Project Polaris Pricing Strategy. Id. at 37.
- 9 • Project Vecchio Pricing Strategy. Id. at 66.
- 10 • Early Commit to Project Vecchio. Id. at 62-63.
- 11 • Cisco's End-to-End Cost Model. Id. at 39.

12 In its opposition, plaintiff defends the actionability of this designated information on
13 two grounds. First, it reflects emerging opportunities in the collaboration space. Dkt.
14 149-4 at 25-28. Second, it is included in documents that also describe "design
15 specifications" for Polaris and Vecchio. Id. The court rejects both justifications.

16 Plaintiff's first argument is disingenuous. In its prior order, the court methodically
17 analyzed which sorts of sufficiently described trade secret information plaintiff adequately
18 alleged as maintaining independent economic value. Dkt. 126 at 5-12. The court
19 expressly held that information concerning the above-bulleted subject matters were not
20 among them. Plaintiff may not sidestep the court's prior holding by an ex post
21 recharacterization of such matters under the vaguer emerging business opportunities
22 subject matter. Stated differently, plaintiff may not rely on a permissible but general
23 subject matter to advance a subset of information under a more specific but previously
24 excluded subject matter.

25 Plaintiff's second argument misses the point. The fact that a document contains
26 both (1) details reflecting plaintiff's video-conferencing devices' design specifications and
27 (2) other information concerning such devices does not mean that the latter portions of
28 such a document qualify as an actionable trade secret. When the court concluded that

1 "plaintiff adequately alleged that the design specifications and schematics of its pre-
2 release video conferencing prototype," Dkt. 126 at 12, it, again, did so in reference to the
3 SAC's use of the term "design specifications and schematics," *id.* at 7-8.

4 In its SAC, plaintiff itself describes those categories of information as "technical,"
5 SAC ¶ 214, and reflecting a device's "component selection and layout," *id.* ¶ 99. By
6 plaintiff's own argument, however, the subject information concerns "emerging business
7 opportunities." Dkt. 149-4 at 25-28. It is not technical. Thus, the second argument does
8 not make the above-bulleted information actionable.

9 That then leaves only plaintiff's catch-all argument that the court should not strike
10 information that does not "cleanly fit into the categories identified in [the court's] previous
11 order" because such information provides "relevant factual context of Cisco's
12 misappropriated trade secrets." Dkt. 149-4 at 28-29. To support this position, plaintiff
13 cites a parenthetical to Magistrate Judge Beeler's decision in Crawford v. Kaiser
14 Foundation Health Plan, 395 F.Supp.3d 1279 (N.D. Cal. 2019), which, in turn, relies on
15 Judge Wilken's decision in Cayo v. Valor Fighting & Management LLC, 2009 WL
16 1626586 (N.D. Cal. June 8, 2009). *Id.*

17 These decisions are inapplicable. Both concern motions to strike a complaint.
18 Crawford, 395 F.Supp.3d at 1293-94; Cayo, 2009 WL 1626586, at *5. However, as the
19 court will further explain below, the purpose of a California Code of Civil Procedure §
20 2019.210 disclosure is "to require the trade secret claimant to identify the alleged trade
21 secret with adequate detail to allow the defendant to investigate how it might differ from
22 matters already known and to allow the court to craft relevant discovery." Brescia v.
23 Angelin, 172 Cal. App. 4th 133, 147 (2009). The court finds that including information
24 that falls outside the scope of the court's prior order does not promote these interests. To
25 the contrary, such inclusion generates unnecessary confusion about the actionable
26 information at issue.

27 In short, given that the above seven trade secrets fall outside the scope of the
28 court's prior order, the court grants the motion to strike the disclosure at pages 34:13

1 through 34:27, 33:26 through 34:12, 34:27 through 35:13, 37:14 through 37:27, 39:15
2 through 40:1, 62:15 through 63:14, and 66:12 through 66:26.

3 **4. Plaintiff's Trade Secret Information Satisfies CCP § 2019.210's**
4 **Reasonable Particularity Requirement**

5 A plaintiff alleging trade secrets misappropriation under California law must identify
6 the trade secrets at issue with reasonable particularity prior to commencing discovery.
7 Cal. Civ. Pro. § 2019.210. The term "reasonable particularity" requires that a plaintiff
8 "make some showing that is reasonable," which, in effect, means "fair, proper, just, and
9 rational, under all of the circumstances to identify its alleged trade secret in a manner that
10 will allow the trial court to control the scope of subsequent discovery, protect all parties'
11 proprietary information, and allow them a fair opportunity to prepare and present their
12 best case or defense at a trial on the merits." Advanced Modular Sputtering, Inc. v.
13 Superior Court, 132 Cal. App. 4th 826, 835 (2005).

14 The reasonable particularity requirement does not demand that a plaintiff "define
15 every minute detail of its claimed trade secret at the outset of litigation" or that a trial court
16 "conduct a miniature trial on the merits of a misappropriation claim before discovery
17 commences." Id. at 835-36. Instead, to satisfy it, a plaintiff must "identify the alleged
18 trade secret with adequate detail to allow the defendant to investigate how it might differ
19 from matters already known and to allow the court to craft relevant discovery." Brescia,
20 172 Cal. App. 4th at 147. Lastly, California state courts have instructed that "the
21 designation should be liberally construed, and reasonable doubts about its sufficiency
22 resolved in favor of allowing discovery to go forward." Id. at 149.

23 Plantronics challenges the particularity of the disclosure on two grounds. First, it
24 argues that the disclosure fails to identify which defendant allegedly misappropriated
25 which trade secret. Dkt. 136-3 at 19-21. Second, it argues that the disclosure fails to
26 describe its trade secrets with the requisite specificity. Id. at 21-29.

27 ///

28 ///

a. Failure to Identify Which Defendant Misappropriated the Subject Information

3 Based on the parties' briefing, it appears that they have resolved two of the
4 specific concerns underlying defendant's first challenge. First, with respect to the Sunkist
5 Trade Secrets (Discl. at 3-22), plaintiff has clarified that "at least Dr. Chung
6 misappropriated Project Sunkist trade secrets contained in the EA Document . . . and that
7 Mr. He misappropriated the trade secrets contained." Dkt. 149-4 at 13-14. Consistent
8 with this court's holding in Section I.B.2.b.i. above that any Sunkist information pertaining
9 to Chung be limited to that contained in the EA document, the court orders plaintiff to
10 revise its disclosure to clarify and expressly limit Chung's alleged misappropriation of the
11 Sunkist information to that in the EA document.

12 Second, with respect to the Business Information Trade Secrets (Discl. at 69-76),
13 plaintiff agreed to withdraw “the He Business Information Trade Secrets” designated in
14 the disclosure at pages 70:9 through 70:17. Dkt. 149-4 at 21 n.6. That designated trade
15 secret appears to be the only information in this section purportedly misappropriated by
16 He. For clarity, plaintiff must remove any reference to He in the revised disclosure’s
17 Business Information Trade Secrets section.

The only remaining question with respect to this challenge is whether plaintiff must identify which particular business information was misappropriated by Williams and which was misappropriated by Puorro. In its May 26 order, the court found that plaintiff alleged a series of detailed communications between these defendants suggesting that the actionable information purportedly misappropriated by Williams was coextensively misappropriated by Puorro. Dkt. 97 at 40 (“The court concludes that the above allegations show that Puorro received the information relating to the various subject matter that Williams purportedly misappropriated.”). The court reasoned that Puorro’s and Williams’ “attempts at secrecy support a reasonable inference that Puorro knew or should have known that the allegedly shared information was being passed along by Williams in violation of his [Proprietary Information and Inventions Agreement].” Id.

Given that reasoning, the court concludes that, at this juncture in the litigation, plaintiff need not specify which particular purported trade secret described in the Business Information Trade Secrets section was, in fact, misappropriated by which of these defendants to permit an adequate investigation and defense of the claims against them.

b. Failure to Describe the Designated Information with the Requisite Specificity

Plantronics argues that the plaintiff fails to adequately describe its trade secrets as they pertain to the following sorts of information: (1) Project X and Project Liberator; (2) plaintiff's limited restructurings; (3) other miscellaneous business information; and (4) Project Rialto. Dkt. 136-3 at 21-29. The court considers each category in turn.

i. Project X and Project Liberator

Plantronics principally argues that the disclosure's description of Project X and Project Liberator detail nothing more than "general business concepts" concerning plaintiff's marketing plans and sales strategies. Dkt. 136-3 at 21-24.

The court disagrees with that characterization. Project X is a multi-prong business expansion plan that Williams developed when working for plaintiff. Discl. at 74. Project Liberator is a multi-step sales strategy aimed at capturing the market share held by plaintiff's competitors for certain sorts of products. Id. at 75. In its disclosure, plaintiff cites various specific documents produced to defendants that elaborate on these projects. Id. at 74-75. This information provides Williams, Puorro, and Plantronics sufficient detail about these projects to investigate the claims against them as they pertain to that information.

Plantronics' remaining argument that this information is not, in fact, a trade secret, Dkt. 158-4 at 9-10, does not alter this conclusion. On the merits, Plantronics might be correct. However, to satisfy California Code of Civil Procedure § 2019.210's reasonable particularity requirement, plaintiff need not prove that fact. Advanced Modular Sputtering, Inc., 132 Cal. App. 4th at 835-36 ("Nor does [§ 2019.210] require a discovery referee or trial court to conduct a miniature trial on the merits of a misappropriation claim before

discovery may commence.”). Thus, the court denies the request to strike the Project X and Project Liberator information designated in the disclosure.

ii. Limited Restructurings

Plantronics argues that information pertaining to plaintiff's then-impending employee layoffs may not qualify as a trade secret. Dkt. 136-3 at 24-25. Again, while Plantronics might be correct on this point, the instant motion is not the proper procedural vehicle to challenge the actionability of this information. Given that Plantronics failed to identify any material deficiency in the disclosure's description of this purported trade secret information, the court denies the request to strike this information.

iii. Other Sorts of Business Information

Plantronics argues that various other sorts of information should be stricken because they are publicly available. Dkt. 136-3 at 25-27. Such information pertains to plaintiff's (1) partner margins and (2) growth by geographic segment, as well as (3) a competitor's (Avaya) bankruptcy. Id.⁶

Again, this argument mistakenly goes to the merits of plaintiff’s claim. In terms of satisfying California Code of Civil Procedure § 2019.210, the court finds that the disclosure provides Williams, Puorro, and Plantronics enough detail to investigate and defend the claims against them as they pertain to the above information. Importantly, the disclosure details the typical range in plaintiff’s partner margins. Discl. at 75. It also provides a percentage growth rate for various segments and sectors in the world economy. Id. at 70. Lastly, the disclosure’s references to Avaya’s 2017 bankruptcy relate to Project Liberator. Id. at 75. They do not themselves serve as an independent basis for plaintiff’s claims. Thus, the court denies the request to strike this information.

iv. Project Rialto

Project Rialto refers to the second-generation of a product that plaintiff had, at the time of its purported misappropriation by Williams and Puorro, developed but not yet

⁶ Plaintiff withdrew its designation of the 2019 revenue information previously at issue. Dkt. 149-4 at 17 n.4 (withdrawing designation at pages 70:9 through 70:17).

1 released. Discl. at 68-69. Plantronics challenges the disclosure's designation of
2 information pertaining to it on two grounds. First, plaintiff's inclusion of Rialto's technical
3 information is outside the scope of this court's May 26, 2020 order. Dkt. 136-3 at 27-28.
4 Second, the fact that plaintiff had been developing such product but withholding its
5 release does not qualify as a trade secret. Id.

6 Plantronics' first argument appears to rest on a false premise. Contrary to
7 Plantronics' suggestions, plaintiff does not designate Rialto's technical information as a
8 trade secret misappropriated by Williams or Puorro. Instead, plaintiff designates
9 Williams' supposed disclosure of Rialto's existence to Puorro as the purported trade
10 secret. While the court has its doubts about whether such fact itself qualifies as a trade
11 secret, the instant motion is not the proper procedural vehicle to make that merits-based
12 determination. Thus, the court denies the request to strike this information.

13 In light of the above, the court orders plaintiff to revise its disclosure consistent
14 with this order, including by removing all stricken or withdrawn designations and making
15 all clarifications noted above. Then, plaintiff must re-serve this third-amended disclosure
16 on defendants. Given the substantial resources that the court and the parties have
17 invested in analyzing the disclosure, plaintiff may not further amend it without leave of
18 court or consent of defendants.

19 **II. Motions to Seal**

20 "There is a general principle in favor of public access to federal court records.
21 Nixon v. Warner Commc'nns, Inc., 435 U.S. 589, 597 (1978). "The proponent of sealing
22 bears the burden with respect to sealing. A failure to meet that burden means that the
23 default posture of public access prevails." Kamakana v. City & City of Honolulu, 447 F.3d
24 1172, 1182 (9th Cir. 2006).

25 The Ninth Circuit has recognized that two different standards may apply when a
26 request to seal a document is made in connection with a motion—namely the "compelling
27 reasons" standard or the "good cause" standard. Ctr. For Auto Safety v. Chrysler Grp.,
28 LLC, 809 F.3d 1092, 1096-97 (9th Cir. 2016). The compelling reasons standard applies

1 to any sealing request made in connection with a motion that is “more than tangentially
2 related to the merits of a case.” Id. at 1101.

3 Under that standard, a court may seal a record only if it finds a “compelling
4 reason” to support such treatment and articulates “the factual basis for its ruling, without
5 relying on hypothesis or conjecture.” Id. at 1096-97. If it has made such finding, the
6 court “must then conscientiously balance the competing interests of the public and the
7 party who seeks to keep certain judicial records secret.” Id. at 1097. Factors relevant to
8 that balancing test include the public interest “in understanding the judicial process,”
9 Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 679 n.6 (9th Cir. 2010), as well as the
10 volume of material sought to be sealed, Algarin v. Maybelline, LLC, 2014 WL 690410, at
11 *3 (S.D. Cal. Feb. 21, 2014).

12 The Ninth Circuit has expressly acknowledged that “[w]hat constitutes a
13 ‘compelling reason’ is best left to the sound discretion of the trial court.” Ctr. for Auto
14 Safety, 809 F.3d at 1097. “Examples include when a court record might be used to
15 gratify private spite or promote public scandal, to circulate ‘libelous’ statements, or ‘as
16 sources of business information that might harm a litigant’s competitive standing.’” Id.

17 Plaintiff seeks to seal portions of the following three sets of documents: (1)
18 Plantronics’ opening brief in support of its motion to strike the disclosure and that brief’s
19 associated exhibits, Dkt. 141 (declaration filed in support of Plantronics’ administrative
20 motion to seal (Dkt. 136)); (2) plaintiff’s opposition to the motion to strike and its
21 associated exhibits, Dkt. 149; Dkt. 156 (refiling Docket 149’s exhibits with confidentiality
22 designations); and (3) Plantronics’ reply in support of the motion to strike, Dkt. 160
23 (declaration filed in support of Plantronics’ administrative motion to seal (Dkt. 158)).

24 Plaintiff asserts that the good cause standard governs these requests. Plaintiff
25 fails to cite any authority in support of that assertion. Plainly, plaintiff’s purported trade
26 secrets are at the heart of this action. They are also the focus of Plantronics’ motion to
27 strike. Thus, this motion is “more than tangentially related to the merits of the case.” Ctr.
28 For Auto Safety, 809 F.3d at 1096-97. Given that, the court will apply the compelling

1 reasons standard to plaintiff's requests.

2 **A. The Opening Brief Materials**

3 Plaintiff asks that the court seal portions of three filings in connection with the
4 motion to strike: (1) the disclosure filed by Plantronics with its opening brief; (2) the
5 opening brief itself; and (3) two other exhibits filed in support of Plantronics' opening brief.
6 Dkt. 141.

7 **1. Disclosure Portions**

8 Plaintiff seeks to seal approximately 111 portions of its disclosures. Id. at 4-12. It
9 argues that the court should seal these portions for three reasons. First, they contain
10 plaintiff's "highly confidential" information and "explicitly identify or reflect Cisco's trade
11 secrets." Dkt. 141 at 12-13. Second, California Code of Civil Procedure § 2019.210
12 permits courts to make any order appropriate under California Civil Code § 3426.5, which
13 requires courts to "preserve the secrecy of an alleged trade secret by reasonable
14 means," including by "sealing the records of the action." Id. at 13. Third, if unsealed, the
15 information would harm plaintiff's competitive standing. Id. at 13-14.

16 The court finds compelling reasons to seal some but not all of the subject portions
17 in the disclosure. Plaintiff accurately asserts that California Code of Civil Procedure §
18 2019.210 permits the court to make "any order that may be appropriate under Section
19 3426.5 of the Civil Code" in connection with a disclosure made under its provision.
20 California Civil Code § 3426.5, in turn, provides that:

21 In an action under this title, a court **shall** preserve the secrecy
22 of an alleged trade secret by reasonable means, which may
23 include granting protective orders in connection with discovery
24 proceedings, holding in-camera hearings, **sealing the records**
of the action, and ordering any person involved in the litigation
not to disclose an alleged trade secret without prior court
approval. Cal. Civ. Code § 3426.5 (emphasis added).

25 All 111 portions of the information at issue in this request are contained in
26 plaintiff's disclosure. Subject to the court's order on the motion to strike, the disclosure
27 purports to describe the trade secrets at issue in this action. Thus, except for those
28 portions of the disclosure ordered stricken, the court finds a compelling reason to seal all

1 requested portions of the disclosure on the basis of California Civil Code § 3426.5's
2 mandatory instruction that it preserve the secrecy of an alleged trade secret.

3 However, because the stricken information does not come within the scope of the
4 alleged trade secrets at issue in this action, California Civil Code § 3426.5 does not
5 provide such blanket protection for that information. That then leaves only plaintiff's first
6 and third arguments.

7 The first argument is unavailing. As this court has recently held, the compelling
8 reasons standard demands more than a general assertion by a company or its lawyer
9 that it treats information as "confidential" to justify sealing. IntegrityMessageBoards.com
10 v. Facebook, Inc., 2020 WL 6544411, at *9 (N.D. Cal. Nov. 6, 2020) (rejecting
11 Facebook's request to seal "commercially sensitive R&D details" under that standard).

12 The third argument concerning the risk of competitive harm to plaintiff does not
13 fare any better. To support it, plaintiff proffers the declaration of two of its employees,
14 Faisal Haq ("Haq"), Dkt. 141-1, and Brian Stout ("Stout"), Dkt. 141-2,⁷ as well as outside
15 counsel, Carson Olsheki ("Olsheki"). Haq is a manager of Hardware Engineering in
16 plaintiff's Unified Communications Technology Group ("UCTG"). Dkt. 141-1 ¶ 1. His
17 responsibilities include overseeing the development of plaintiff's collaboration software.
18 Id. In his declaration, Haq addresses the information in the disclosure concerning various
19 projects at issue, including Sunkist, Polaris, and Vecchio. Dkt. 141-1 ¶¶ 4-10.

20 When discussing competitive harm that would result if the information pertaining to
21 these projects were unsealed, Haq focuses his attention on the effect of disclosing these
22 projects' **technical** details. Dkt. 141-1 ¶ 5 (competitive harm that plaintiff would suffer if
23 "[d]ocuments reflecting Sunkist's design" were revealed); id. ¶ 6 (competitive harm that
24 plaintiff would suffer if documents "reflecting the Polaris hardware design" or its "design
25 plans or proprietary features" were disclosed); id. ¶ 8 (generally stating that "[i]f a

26
27

⁷ Plaintiff filed these declarations as scanned documents, preventing the court from easily
28 transferring their information into this order. Going forward, plaintiff should provide
workable documents as part of their filings (scanned signature pages are acceptable).

1 competitor has access to information regarding unreleased Cisco products before it
2 becomes publicly available [apparently in reference to Vecchio], they can use Cisco's
3 research and development efforts to build a competing product at a lower cost.").

4 However, the information stricken from the disclosure concerns the *non*-technical,
5 i.e., business and sales, information pertaining to these projects. In particular, such
6 information includes:

- 7 • Sunkist's revenue goals for 2020 through 2022. Discl. at 21:15-22:13
8 (Sunkist's Internal Revenue Targets).
- 9 • Sunkist's marketing information with a 2019 timeline with descriptions of the
10 product's intended users and a X-Y graph comparing its features and price to
11 competing headsets. Id. at 11:27-12:21 (Sunkist's Business Commit).
- 12 • Polaris's expected placement in the market for video products for 2018 through
13 2021. Id. at 34:13-27 (Cisco Video Products Portfolio).
- 14 • Polaris's revenue goals and a potential major customer for the product. Id. at
15 33:26-34:12 (Project Polaris Internal Strategy).
- 16 • Polaris's sales priorities organized according to use case and sales tactics. Id.
17 at 34:27-35:13 (Project Polaris Sales Strategy).
- 18 • Polaris's projected market price, costs compared to other plaintiff products, and
19 price demand elasticity. Id. at 37:14-27 (Project Polaris Pricing Strategy).
- 20 • Polaris's various categories of costs, from production to transportation to
21 product warranty. Id. at 39:15-40:1 (Cisco's End-to-End Cost Model).
- 22 • Vecchio's projected price, costs, and profit margins. Id. at 66:12-26 (Project
23 Vecchio Pricing Strategy).
- 24 • Vecchio's business justifications and its potential financial benefits. Id. at
25 62:15-63:14 (Early Commit to Project Vecchio).

26 The only reference by Haq that even touches on the effect of disclosing the above
27 sort of business-like information is cabined in a penultimate, catch-all paragraph to his
28 declaration. In it, he states that the information requested for sealing:

1 Reflect highly confidential financial and customer data, which,
2 if disclosed publicly, would cause competitive harm at least by
3 providing information about markets and customers that Cisco
4 is pursuing to competitors, thereby depriving Cisco of a first-
5 mover advantage. Dkt. 141-1 ¶ 12

6 For at least two reasons, this statement is insufficient to justify finding that plaintiff
7 would suffer competitive harm in the event the various sorts of business, sales, or
8 strategy information pertaining to these projects were unsealed. First, Haq fails to tie this
9 statement to any particular piece of the non-technical aspects of the Sunkist, Polaris, or
10 Vecchio information stricken from the disclosure. Second, even if he had, this single
11 statement fails to explain either how the subject information provides plaintiff some “first-
12 mover advantage” in the first place or why a competitor’s acquisition of the subject
13 information would create a non-speculative risk that it would lose such purported
14 advantage.

15 Stout’s declaration does not provide any additional support for a finding of
16 competitive harm. Stout is a director for plaintiff’s America Collaboration Sales division.
17 Dkt. 141-2 ¶ 1. He opines on the competitive disadvantage that plaintiff would suffer if its
18 business information were disclosed. Id. ¶¶ 5-6, 8. However, Stout expressly limits his
19 opinion to the “Business Information Trade Secrets” detailed at the disclosure’s Section
20 VIII (Discl. at 69-76). Id. ¶ 3 (“I have reviewed Section VIII of the Trade Secret
21 Identification . . . as well as Carson Olsheki’s declaration relating to that portion (which I
22 understand will be submitted concurrently). ***I have no opinions on the other
sections.***”) (emphasis added). The business information concerning Sunkist, Polaris,
23 and Vecchio, however, are not detailed in that seven-page section.

24 That leaves only Olsheki’s declaration. In it, Olsheki adds that disclosing plaintiff’s
25 “highly confidential internal sales and partner strategies” would “harm Cisco’s competitive
26 standing by providing competitors the ability to use those strategies against Cisco.” Dkt.
27 141 at 14.

28 As an initial matter, the court is hesitant to rely on the declaration of outside
counsel as a credible factual basis for attesting to the competitive harm that a company

1 would suffer if something about its business were revealed. Regardless, even if the court
2 were to accept Olsheki's statement, it suffers from the same shortcomings identified in
3 the Haq declaration—namely, (1) Olsheki fails to tie it to any particular piece of the
4 information stricken from the disclosure; and (2) this single sentence statement fails to
5 explain how a competitor's mere understanding of the subject information would create a
6 non-speculative risk that such competitors could then use it against plaintiff. Given that
7 plaintiff failed to proffer any evidence that it would suffer competitive harm in the event
8 the stricken non-technical information concerning Sunkist, Polaris, and Vecchio were
9 disclosed, plaintiff failed to show a compelling reason to seal it. On this basis alone,
10 plaintiff's request to seal the stricken portions of its disclosure fails.

11 Still, even if plaintiff had shown a compelling reason to seal such stricken
12 information, its request fails for other reasons. Critically, plaintiff does not show how or
13 why the competing public interest in accessing the stricken information to understand the
14 (increasingly nuanced) contours of this litigation is outweighed by its private interest in
15 keeping such material secret. While plaintiff correctly asserts that "preventing the release
16 of trade secrets is a 'compelling reason sufficient to outweigh the public's interest in
17 disclosure and justify sealing court records,'" Dkt. 141 at 14 (citing Kamakana v. City &
18 Cty. Of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006)), that assertion assumes that the
19 stricken disclosure portions come within the scope of the purported trade secret
20 information previously determined to be at issue in this action. As explained above, it
21 does not. Moreover, plaintiff altogether fails to address the weight of the public's interest
22 in understanding what is (and is not) at issue in this action.

23 For these various reasons, the court denies plaintiff's request to seal any portion of
24 the disclosure within the range of the nine stricken parts of the disclosure listed
25 immediately above. Otherwise, the court grants plaintiff's request to seal any and all of
26 the remaining 111 portions of the disclosure sought for sealing.⁸

27
28 ⁸ The court understands that pages 42:22 through 42:24 of the disclosure also includes
some Polaris design-related details. The court will consider the three blocks of texts

1 **2. Opening Brief Portions**

2 Plaintiff seeks to seal approximately 45 lines in Plantronics opening brief in
3 support of its motion to strike. Dkt. 141 at 2-4. To support sealing this information,
4 plaintiff relies on the same three arguments advanced in support of sealing the disclosure
5 portions. Id. at 12-14.

6 For various reasons, the court will seal some but not all of the requested portions.
7 First, to the extent Plantronics' opening brief reflects information in the disclosure that the
8 court determined is subject to sealing, such opening brief portions must also be sealed.
9 Those parallel portions include the following ranges of Docket 136-3:

- 10 • Page 15:13 through 15:14 (concerning Sunkist's development process and
11 timeline).
- 12 • Page 16:6 through 16:7 (concerning Sunkist's competitive differentiators).
- 13 • Page 19:3 through 19:4 (concerning Polaris's survey results).
- 14 • Page 19:6-7 (concerning booking data by segment and industry).
- 15 • Page 19:13 (identifying supplier for Vecchio).
- 16 • Page 25:18 and 25:19 (concerning partner margins).
- 17 • Page 27:9 through 27:11 (concerning Avaya bankruptcy).
- 18 • Page 27:20 through 27:22 (concerning Rialto).
- 19 • Pages 27:26 through 28:1 (concerning Rialto).
- 20 • Page 136-3 at 28:11 (concerning Rialto).

21 Second, given that Project X and Project Liberator fall within the non-stricken
22 portion of plaintiff's disclosure, Discl. at 74-75, the court finds a compelling reason to seal
23 the opening brief's references to those projects. Such portions include the following
24 ranges of Docket 136-3:

- 25 • Page 22:2 through 22:4.
- 26 • Page 22:6 through 22:8.

27 underneath the pictures at the above referenced lines as protectable under California
28 Civil Code § 3426.5 and, thus, sealable.

- 1 • Page at 22:20 through 22:23.
- 2 • Page 22:25 through 22:26.
- 3 • Page 23:7 through 23:8.
- 4 • Page 23:14 through 23:15.
- 5 • Page 136-3 at 27:4 through 27:5.

6 Given the specificity of the above page and line designation proffered by plaintiff,
7 the court also finds that its request to seal the above-bulleted information is narrowly
8 tailored. Accordingly, the court grants plaintiff's request to seal the two above-bulleted
9 portions of Plantronics' opening brief.

10 That said, to the extent the opening brief reflects information in the disclosure that
11 the court determined is not subject to sealing, such opening brief portions also may not
12 be sealed. Those parallel portions include the following ranges of Docket 136-3:

- 13 • Page 15:9 through 15:10 (concerning Sunkist's internal revenue targets).
- 14 • Page 18:9 through 18:10 (concerning Polaris's internal strategy).
- 15 • Page 18:11 through 18:12 (concerning Polaris's sales strategy).
- 16 • Page 18:14 through 18:15 (concerning Polaris's pricing strategy).

17 As discussed above, the above-listed information falls outside of the scope of the
18 trade secrets at issue in this action. None of the declarations proffered in support of
19 sealing this material establish that plaintiff would suffer competitive harm if this
20 information were disclosed. Accordingly, the court denies plaintiff's request to seal these
21 portions of Plantronics' opening brief.

22 **3. The Remaining Documents**

23 Plaintiff requests that the court seal two other documents filed by Plantronics in
24 support of its motion to strike. The first document is an email from Williams to
25 Plantronics' former chief executive officer, Joe Burton ("Burton"), concerning Project X.
26 Dkt. 136-5 at 85-86. Plaintiff requests that the court seal three portions of that email,
27 namely "What is Project X," "Project X Makeup," and "Measuring Project X." Dkt. 141 ¶
28 6. The second document is an internal Cisco PowerPoint presentation concerning

1 Project Liberator. Dkt. 136-5 at 88-106. Plaintiff requests that the court seal this entire
2 document. Dkt. 141 ¶ 7.

3 The court finds a compelling reason to seal the above referenced materials. As
4 explained above, both Project X and Project Liberator fall within the scope of the trade
5 secrets at issue in this action. Plaintiff's sealing requests are also narrowly tailored.
6 Accordingly, the courts seals Docket 136-5 at page 85 (starting after "What is Project
7 X?") until the word "Creation" at page 86 (but not including the paragraphs that follow).
8 The court also seals Docket 136-5 at pages 88 through 106 in its entirety.

9 **B. The Opposition Materials**

10 Plaintiff asks that the court seal the following: (1) portions of plaintiff's opposition to
11 the motion to strike; and (2) ten documents purportedly reflecting plaintiff's "highly
12 confidential" information. Dkt. 149.

13 **1. Opposition Brief Portions**

14 Plaintiff seeks to seal approximately 19 lines in its opposition to the motion to
15 strike. *Id.* at 2-4. To support sealing this information, plaintiff relies on the same three
16 arguments advanced in support of sealing the disclosure portions. Dkt. 149-1 at 4-5.

17 With one exception, the court will seal all requested portions. First, given that the
18 opposition reflects information in the disclosure that the court determined is subject to
19 sealing, such opposition portions must also be sealed. Those parallel opposition portions
20 include the following ranges of Docket 149-4:

- 21 • Page 14:21 through 14:25 (Project X).
- 22 • Page 15:3 through 15:6 (Project Liberator).
- 23 • Page 18:27 (Project Rialto).
- 24 • Page 25:12 through 25:15 (Project Vecchio hardware).
- 25 • Page 27:2 through 27:4 (Project Vecchio design).

26 That said, because the opposition also reflects information in the disclosure that
27 the court determined is not subject to sealing, namely at Docket 149-4 at 21:19 through
28 21:20, such portion may not be sealed.

Given the specificity of the above-bulleted designations, the court also finds that these requests are narrowly tailored. Accordingly, the court grants in part and denies in part the request to seal the subject opposition portions.

2. The Remaining Documents

Plaintiff seeks to seal ten exhibits filed in support of its opposition to Plantronics' motion to strike. Dkt. 149 at 2-4. Plaintiff excerpts and refers to portions of these documents in its disclosure. See generally Discl.⁹

To support sealing these exhibits, plaintiff relies on the same three arguments advanced in support of sealing the disclosure portions. Dkt. 149-1 at 4-5. Again, when making these arguments, plaintiff mistakenly relies on the lower good-cause standard to seal these materials. Id. Plaintiff also fails to proffer any non-attorney declaration to justify sealing the subject documents. Fortunate for plaintiff, the court's order on the motion to strike refers to only one exhibit (the Sunkist Business Commit presentation) and the court need not consider the remaining exhibits to decide the motion to strike. Accordingly, the court terminates plaintiff's request to seal Docket 156-2 through Docket 156-10 as moot. The materials filed as part of this request shall remain restricted.

That leaves only the Sunkist Business Commit presentation filed at Docket 156-1. As explained at Section I.B.2.a.ii., plaintiff included excerpts of this presentation in the non-technical stricken portions of its disclosure. As indicated above, plaintiff failed to show a compelling reason to seal such stricken portions. Given that, the court denies the request to the extent it seeks to seal diagrams stricken from the disclosure. Those slides are at Docket 156-1 at 4 (Headset Roadmap) and 8 (Internal Revenue Targets).

However, because other slides at Docket 156-1 include Sunkist design-related information that the court determined is within the scope of its prior order (e.g., Dkt. 156-1 at 10), the court finds a compelling reason to seal those slides, as well as other slides

⁹ Plaintiff initially filed these exhibits as attachments at Docket 149 on October 1, 2020. On October 13, 2020, plaintiff re-filed these exhibits with a confidentiality footer. Dkt. 156 at 2. Given such replacement, the court terminates the request to seal these ten exhibits (Docket 149-5 through Docket 149-14).

1 that appear to contain similar information. Thus, the court will seal Docket 156-1 at 5, 7,
2 and 9-11. Given the absence of any such technical information on the remaining slides,
3 the court denies the request with respect to Docket 156-1 at 2,3, and 6.

4 One final point related to this sealing request. On October 12, 2020, Plantronics
5 filed an opposition to plaintiff's motion to seal the opposition to the motion to strike and
6 that brief's associated exhibits. Dkt. 154. As part of its October 12 filing, and in an
7 apparent attempt to comply with the terms of the parties' stipulated protective order,
8 Plantronics filed an administrative motion to seal portions of its opposition to plaintiff's
9 motion to seal. Dkt. 154-4. The redacted portions cursorily reference the exhibits filed by
10 plaintiff as part of its opposition to the motion to strike. Id. Pursuant to Local Rule 79-
11 5(e)(1), plaintiff had four days to file a declaration in support of sealing the portions
12 marked for sealing by Plantronics. Plaintiff failed to do so. Accordingly, the court denies
13 the motion to seal (Dkt. 154) in its entirety.

14 **C. The Reply Materials**

15 Plaintiff seeks to seal approximately 19 lines in Plantronics' reply in support of its
16 motion to strike. Dkt. 160 at 2-4. As the basis for this request, plaintiff asserts that the
17 information sought for sealing in those lines contains "highly confidential" information
18 from its disclosure concerning Project X, Project Liberator, Project Sunkist, the EA
19 document, and Project Vecchio. Id.

20 The court finds compelling reasons to seal portions of the reply that concern or
21 directly quote from non-stricken information in the disclosure. Dkt. 158-4 at 5:23-25
22 (Project X); Id. at 7:15-17 (same); Id. at 9:9-12 (same); Id. at 9:23-16 (Project Liberator);
23 Id. at 16:9-11 (EA Document); Id. at 158-4 at 16:22-23 (Vecchio). Given the specificity of
24 these designations, the court also finds that these requests are narrowly tailored.

25 That said, the court denies plaintiff's request to seal the Sunkist internal revenue
26 target information. As decided above, the court has ordered such information stricken
27 from the disclosure and plaintiff failed to proffer a factual basis for its assertion that it
28 would suffer competitive harm if such information were unsealed. Olsheki's most recent

1 declaration filed in support of this request does not change that finding. In it, Olsheki
2 adds that:

3 If revealed to a competitor, this information would cause
4 competitive harm at least by providing information about
5 markets that Cisco is pursuing to competitors, thereby
depriving Cisco of its ability to control information about its
product lifecycles. Dkt. 160 at 4.

6 This single-sentence addition fails to explain how the fact that Sunkist has a three-
7 year revenue target (from 2020-22) would impart plaintiff's competitors with information
8 about the market that plaintiff is pursuing. The court also does not see any coherent
9 connection between that fact and plaintiff's perceived risk of harm. Accordingly, the court
10 denies plaintiff's request to seal Docket 158-4 at 13:26.

11 III. Motion for a Protective Order

12 "Unless otherwise limited by court order," Rule 26 provides that "[p]arties may
13 obtain discovery regarding any nonprivileged matter that is relevant to any party's claim
14 or defense and proportional to the needs of the case, considering the importance of the
15 issues at stake in the action, the amount in controversy, the parties' relative access to
16 relevant information, the parties' resources, the importance of the discovery in resolving
17 the issues, and whether the burden or expense of the proposed discovery outweighs its
18 likely benefit." Fed. R. Civ. Pro. 26(b)(1).

19 A party may move the court for an order protecting it from having to respond to a
20 pending discovery request. Fed. R. Civ. Pro. 26(c). To do so, the movant must certify
21 that the movant has, in good faith, conferred or attempted to confer with other affected
22 parties in an effort to resolve the dispute without court action. Id.

23 The court denies the motion for a protective order. Some aspects of the motion
24 are now moot in light of the court's rulings above and the parties should figure out in the
25 first instance what is deserving of protection. Critically, as the emails detailing the events
26 leading to the instant motions show, the parties failed to meaningfully meet and confer
27 about the supposed deficiencies in plaintiff's requests before Plantronics filed this motion.
28 It is quite obvious that at least some of Plantronics' concerns, including, for example,

1 timeframe, could have been resolved without court intervention. As part of the meet and
2 confer process, the parties **must** speak orally (including by telephone or zoom) before
3 filing any discovery motion. If, after meaningfully attempting this process, the parties still
4 cannot resolve their disputes concerning the discovery at issue, they may file a joint letter
5 detailing their concerns for resolution by the court.

6 CONCLUSION

7 For the above reasons, the court **GRANTS IN PART** and **DENIES IN PART**
8 Plantronics' motion to strike the disclosure. Dkt. 136. Within 14 days of this order,
9 plaintiff must serve defendants with a third-amended disclosure accounting for all rulings
10 in this order. In the event plaintiff again attempts to expand the scope of its disclosure in
11 violation of this court's prior orders, the court may issue sanctions.

12 The court also **DENIES** Plantronics' motion for a protective order without
13 prejudice. Dkt. 137. The parties must meet and confer by telephone or video conference
14 in good faith to attempt to resolve any dispute before renewing this motion.

15 Lastly, as specified in this order, the court **GRANTS IN PART** and **DENIES IN**
16 **PART** plaintiff's requests to seal the disclosure, the motion to strike briefing, and such
17 briefing's supporting documents. Dkts. 141, 149, 160. Because plaintiff has requested
18 the subject sealing, the court orders it to prepare a redacted copy of the disclosure,
19 defendant's opening brief, and defendant's reply. Plaintiff must provide defendant with
20 those copies within ten days of this order. Within 14 days of this order, defendant must
21 file that material, as well as an unredacted version of Docket 154-4, on the public docket.
22 At that same time, plaintiff must file a redacted version of its opposition and Docket 156-1
23 on the public docket.

24 **IT IS SO ORDERED.**

25 Dated: December 21, 2020

26 /s/ Phyllis J. Hamilton

27 PHYLLIS J. HAMILTON
28 United States District Judge